



City of Seattle

Seattle Police Department

July 8, 2013

Phil Mocek
MuckRock News
Dept MR 4902
PO Box 55819
Boston, MA 02205-5819

RE: Public Disclosure Appeal PDR #2013-605

Mr. Mocek,

The Seattle Police Department (SPD) Legal Unit has received your appeal of the SPD Public Disclosure Unit's (PDU) response to your public disclosure request dated February 26, 2013 in which you requested Suspicious Activity Reports from 2012 that were designated as sharable with all Seattle Shield Members.

The PDU responded to your above noted request by: first, clarifying that the example you referenced is a type of record that is no longer used by Seattle Shield and that the example record you provided was disseminated in error, as it was not eligible or ever intended for disclosure; and second, explaining that the responsive records of the 2012 reports of suspicious activity are all classified as open and not available for public dissemination (See RCW 42.56.240(1), as well as *Newman v. King County* and *Cowles Publishing Co. v. Spokane Police Department*). However, as a courtesy and at the discretion of SPD, PDU provided a redacted version of those open reports to show you the different format of report used.

The SPD Legal Unit researched your appeal in which you requested copies of unredacted reports regarding the above mentioned request and those reports remain open and active and non-disclosure is essential to effective law enforcement; therefore, the response of the SPD PDU (noted above) is upheld. The records you have requested are not available to you in an unredacted format at this time for the reasons previously stated by PDU and noted herein (See RCW 42.56.240(1), as well as *Newman v. King County* and *Cowles Publishing Co. v. Spokane Police Department*).

As a courtesy, I have included greater detail regarding the applicable categorical exemption for your reference:

The records of an open, active police investigation are exempt from disclosure pursuant to RCW 42.56.240(1), commonly known as the "effective law enforcement" exemption. The Washington Supreme Court interpreted the effective law enforcement exemption as it applies to ongoing police investigations in *Newman v. King County*, 133 Wn.2d 565, 947 P.2d 712 (1997). The *Newman* Court held that open and active police investigation files are categorically exempt from disclosure under the PRA because nondisclosure is essential to effective law enforcement. In establishing the categorical exemption, the Court recognized that during an ongoing investigation it is not possible to determine what records are sensitive and therefore the "exemption allows the law enforcement agency, not the courts, to determine what information, if any, is essential to solve

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a case.” 133 Wn.2d at 574-75. The *Newman* Court held that a law enforcement agency “has no duty to disclose any information contained in an open investigation file because the [records] are exempt under [what is now RCW42.56.240(1)].” 133 Wn.2d at 575 (emphasis added).

Law enforcement agencies may withhold the entire contents of an open, active investigation because premature release of the records could jeopardize the investigation and ultimate prosecution of a crime by revealing sensitive information critical to solving the crime. When the categorical exemption expressed in *Newman* applies to an open, active investigation, the agency complies with its obligation to provide a valid claim of exemption under RCW 42.56.210(3) without creating an exemption log or providing specific detailed information about the records contained in the investigative file, such as an index of the contents of the file.

This correspondence closes your public disclosure appeal with SPD.

Sincerely,

Jim Pugel
Chief of Police

A handwritten signature in cursive script, appearing to read "Shawna Skjonsberg-Fotopoulos".

Shawna Skjonsberg-Fotopoulos
Legal Advisor